



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-G-C-

DATE: AUG. 18, 2016

APPEAL OF CHULA VISTA, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 301(a)(7), 8 U.S.C. § 1401(a)(7), *amended by* Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046. An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. For an individual claiming to be a U.S. citizen at birth, and who was born to married parents between December 24, 1952, and November 14, 1986, one parent must be a U.S. citizen parent, and that parent must have been physically present in the United States for 10 years (with at least 5 years occurring after the age of 14) before the individual's birth.

The Field Office Director, Chula Vista, California, denied the application. The Director concluded that the Applicant did not submit sufficient credible evidence to prove that his U.S. citizen father was physically present in the United States during the 10-year period, as required under former section 301(a)(7) of the Act. The record also shows that an Immigration Judge and the Board of Immigration Appeals (the Board) found the Applicant had not demonstrated he was entitled to a certificate of citizenship.

The Director's decision is now before us on appeal. In the appeal, the Applicant claims the Director's decision must be overturned as arbitrary, capricious, or an abuse of discretion within the meaning of the Administrative Procedures Act. The Applicant further contends that the Director did not consider the evidence presented in this matter. In addition, the Applicant asserts that he qualifies for a certificate of citizenship as his older brother was granted a certificate of citizenship on February 26, 2013, on the basis that he acquired U.S. citizenship through his father.¹

Upon *de novo* review, we will sustain the appeal.

I. LAW

¹ Although the Applicant's brother was granted a Certificate of Citizenship, each application is a separate proceeding with a separate record and we are limited to the information contained in that record in reaching its decision, as each case must be evaluated on the basis of the facts and evidence presented. 8 C.F.R. §§ 103.2(b)(16)(ii), 103.8(d).

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The record reflects that the Applicant was born on [REDACTED] in Mexico to a married U.S. citizen father and a Mexican citizen mother. The Applicant's father was born in Mexico, but he acquired U.S. citizenship at birth through his mother, who was born in the United States. The Applicant seeks a Certificate of Citizenship indicating that he acquired U.S. citizenship at birth from his father pursuant to former section 301(a)(7) of the Act.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

Again, the Applicant was born on [REDACTED] to married parents, one of whom was a U.S. citizen and the other a foreign national. Accordingly, the Applicant's citizenship claim falls within the provisions of former section 301(a)(7) of the Act, which provided that the following individuals shall be citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant was born on [REDACTED] in Mexico to a married U.S. citizen father and a Mexican citizen mother. The Applicant's father was born in Mexico, but he acquired U.S. citizenship at birth through his mother, who was born in the United States. The Applicant's father received his Certificate of Citizenship on June 12, 1959.

The Applicant was admitted to the United States as a lawful permanent resident on October 23, 1965. The Applicant was initially removed from the United States in [REDACTED] 1991, and reentered the United States without inspection in January 1992. The Applicant was subsequently removed from the United States on five occasions, in 1998, 2002, 2006, 2007, and 2008, and reentered the United States without inspection following each removal.

The Applicant was again placed in removal proceedings in 2011. During the removal proceedings, the Applicant indicated that he acquired U.S. citizenship through his U.S. citizen father. In a [REDACTED] 2012 oral decision, the Immigration Judge held that the Applicant did not meet his burden of proving a claim to U.S. citizenship. The Applicant appealed that decision to the Board, which dismissed the appeal in June 2012.

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The Applicant filed a Form N-600, Application for Certificate of Citizenship, with the U.S. Citizenship and Immigration Services (USCIS) Field Office in Chula Vista, California, in November 2014. The Applicant claims that his U.S. citizen father entered the United States in 1943 with his mother, and that his U.S. citizen father lived in the United States from 1943 until [REDACTED] therefore satisfying the physical presence requirements under former section 301(a)(7) of the Act.

The Applicant has submitted documentation to establish his father's citizenship and physical presence. The evidence in the record includes the [REDACTED] U.S. birth certificate of the mother of the Applicant's father, the Applicant's father's birth certificate and Certificate of Citizenship. The record also includes two documents from Catholic churches in California where the Applicant's father received sacraments, documents from the [REDACTED] which show that the mother of the Applicant's father worked for a railroad in the United States from 1943 to 1948, a social security statement for the Applicant's father showing wage earnings from 1951 to 2008, a letter from the [REDACTED] in [REDACTED] California, indicating that the Applicant's father was a member in good standing from 1951 to [REDACTED] and a copy of the 1953 marriage certificate of the Applicant's parents in [REDACTED] Arizona. The record also includes a copy of a school document for the Applicant's father which indicates that his father was enrolled in the [REDACTED] grade at a school in [REDACTED] California, in 1950, and that prior to 1950, he was enrolled in a school in [REDACTED] Mexico. The record further includes affidavits from the Applicant's aunt, a neighbor of the Applicant's father, and the stepbrother of the Applicant's father, each related to the Applicant's father's physical presence in the United States.

The Director concluded that the Applicant did not submit sufficient credible evidence to prove that his U.S. citizen father was physically present in the United States during the 10-year period, as required under former section 301(a)(7) of the Act.

On appeal, the Applicant contends that the Director did not properly consider the evidence presented in this matter, as new evidence that he presented with his Form N-600 was sufficient to overcome the reasons that the Immigration Judge held in 2012 that the Applicant did not meet his burden of proving his claim to U.S. citizenship.

III. ANALYSIS

The Applicant has established that his father is a U.S. citizen as required for acquisition of citizenship at birth under former section 301(a)(7) of the Act. The issue presented in this case is whether the Applicant has shown that his U.S. citizen father meets the physical presence requirements of former section 301(a)(7) of the Act, that his father was physically present in the United States for at least 10 years before the Applicant's birth on [REDACTED] 5 of which were after the father's 14th birthday on [REDACTED]

We find that the evidence presented, including the newly-submitted documents, establishes that it is more likely than not that the Applicant's U.S. citizen father was physically present in the United States for more than 10 years prior to the birth of the Applicant in [REDACTED] and that more than 5 of those years were after his father turned 14 years of age in [REDACTED] We will consider the evidence

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presented in three time periods, 1943 to 1946, 1946 to 1949, and 1950 to [REDACTED] and we will sustain the appeal.

A. Evidence of U.S. Citizen Father's Citizenship and Physical Presence, 1943 to 1946

The record establishes that the Applicant's father is a U.S. citizen by birth. The record includes a copy of the Certificate of Citizenship of the Applicant's father indicating that his father was born in Mexico on [REDACTED] and was granted the Certificate of Citizenship on June 23, 1959. The record also includes a copy of the birth certificate of the mother of the Applicant's father, which indicated that she was born on [REDACTED] Kansas, and which served as the basis for the Applicant's father's acquisition of U.S. citizenship in 1959.

The Applicant has demonstrated, through consistent affidavits and religious records, that his father was physically present from 1943 to 1946. The Applicant's father states that he began residing in the United States in 1943. The Applicant's father provided affidavits and testimony during the Applicant's immigration proceedings, stating that his parents were having marital problems, and they separated in 1943. The Applicant's father states that after the separation, his mother brought him to the United States to live, while his father remained in Mexico. The Applicant's father states that his father remarried in 1945.

The evidence in the record includes a sworn affidavit from the brother of the Applicant's grandmother stating that the Applicant's grandmother came to the United States in 1943 and brought her four children, including the Applicant's father, and that the Applicant's father has resided in the United States since 1943.

The record also includes an affidavit from the Applicant's father's step-brother, the son of the second wife of his father's father, which states that after the Applicant's grandfather married his mother in 1945, that the Applicant's father never lived with his family in [REDACTED] and that the Applicant's father lived with his mother in [REDACTED] after his grandfather remarried in Mexico.

The Applicant has also submitted an affidavit from a friend of the Applicant's father, which reflects that he has known the Applicant's father since 1946 when they were neighbors, and that he worked with the Applicant's father in 1953 in a packing house.

Documentary evidence for this time period includes two documents from Catholic churches in California where the Applicant's father received sacraments. One document is a copy of his father's First Communion Certificate, issued on August 5, 2011, indicating that his father received his First Communion in April 1944 at [REDACTED] in [REDACTED] California. The second document is an undated copy of a certificate from [REDACTED] in [REDACTED] California, indicating that his father received the sacrament of Confirmation on April 7, 1946.

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The affidavits from family members and religious documents consistently corroborate the Applicant's father's assertions that he resided in the United States between 1943, when he was [REDACTED] years old, and 1946, when he was [REDACTED] years old, a period of 3 years.

B. Evidence of U.S. Citizen Father's Physical Presence, 1946 to 1950

The Applicant has also demonstrated that his father was physically present in the United States from 1946 to 1950. The record includes documents from the [REDACTED] which show that the mother of the Applicant's father worked for a railroad in the United States for 53 months in the years leading up to February 1948, including 2 months in 1948, 12 months in 1947, and 39 months (over 3 years) during 1946 and prior years. These documents verify that the mother of the Applicant's father was residing in the United States from at least 1943, when the Applicant's father was [REDACTED] years of age, to 1948, when the Applicant's father was [REDACTED] years of age. Affidavits from the Applicant's father and the Applicant's uncle state that the Applicant's father was living with his mother during this time period, which constitutes further evidence that the Applicant's father was physically present in the United States for 3 years from 1943 to 1946, discussed in subsection A above, and also shows that his father was physically present in the United States for an additional 2 years, from 1946, when he was [REDACTED] years old, to 1948, when he was [REDACTED] years old.

The record includes a 1950 school document indicating that the Applicant's father entered [REDACTED] grade at the [REDACTED] in [REDACTED] California on February 14, 1950, which demonstrates that the Applicant's father was physically present in the United States at that time. However, the document also indicates that prior to February 1950, the Applicant's father attended the [REDACTED] grade at [REDACTED] school in [REDACTED] Mexico. The issue raised by this document as to whether the Applicant's father was physically present in the United States prior to February 1950 was examined during the Applicant's immigration proceedings, and in subsequent filings to the record. The record shows that the Applicant's father gave conflicting information regarding this document during a telephonic interview with an officer with the U.S. Immigration and Customs Enforcement (ICE) in June 2011. An Immigration Judge questioned the Applicant's father this document during the proceedings, and the issue was further addressed in the decision of the Board in June 2012. The Applicant has established through testimony, affidavits, and documents from the school in Mexico that it is more likely than not that the information on the 1950 school document is incorrect, and that the Applicant's father did not attend the school in Mexico prior to February 1950.

Subsequent to the Applicant being placed into immigration proceedings, in [REDACTED] 2011, an ICE officer conducted a telephonic interview with the Applicant's father regarding the school document, recording the results in a memorandum. The memorandum indicates that the Applicant's father initially told the ICE officer that he attended school in the United States from [REDACTED] grade to [REDACTED] grade. When confronted with the fact that the records show that he attended [REDACTED] grade in [REDACTED] the Applicant's father told the ICE officer that was correct. The ICE officer then asked when the Applicant's father first attended school in the United States, to which his father replied in February 1950. The Applicant's father then told the ICE officer that he did not work or attend school prior to attending [REDACTED]. The Applicant's father was asked where he lived between 1947 and 1950,

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and he responded that he would live with both of his parents, sometimes with his father in Mexico, and sometimes with his mother in the United States.

At the immigration proceedings, the Applicant's father was questioned about this document, and his physical presence in the United States between 1947 and 1950. The Applicant's father provided testimony that he only went to elementary school for 7 months prior to going to junior high school. *See* Record of Proceeding, Transcript of [REDACTED] 2011, 93. The Applicant's father further testified that he lived with his mother in [REDACTED] from the age of [REDACTED] and that he would only go to visit his father in Mexico for a day or two during that period. *See Id.* at 95-96. The Applicant's father stated that after his mother stopped working with the railroad, his mother worked to support the family by picking plums, and the family would travel from place to place. *See Id.* at 94. The Applicant's father stated that he was confused when he told the ICE officer that he attended school in the [REDACTED] grade in [REDACTED] Mexico, and that he did not recall telling the ICE officer that he sometimes lived with his father in Mexico. *See Id.* at 119-21.

The 1950 school document states that the authority for information presented in the document, including information related to the Applicant's school of last attendance, was based on "Parent's word." The Applicant's father provided an affidavit to the record dated December 2011 in which he stated that the reason he thinks his mother indicated that he attending school in Mexico prior to enrollment at the [REDACTED] was because she thought she would get in trouble with the law as the Applicant's father hadn't attended school prior to that time.

In the continuation of the Applicant's immigration proceedings, the Applicant submitted a 2011 document provided by the Director of Public Education from the [REDACTED] Mexico, which is the location of the [REDACTED] school indicated on the 1950 school record. The 2011 document states that no document exists certifying that the Applicant's father completed his primary school instruction at that school. The Immigration Judge noted that this document does not say that the Applicant's father never attended the school in [REDACTED] Mexico, it only states that there is no record of completion. *See* Record of Proceeding, Transcript of [REDACTED] 2012, pp. 194-95.

The Immigration Judge found that there was conflicting evidence regarding the physical presence of the Applicant's father in the United States, as the 1950 school document and the Applicant's father's statement to the ICE agent conflicted with his testimony during the proceedings. The Immigration Judge found that the conflicting evidence did not meet the standard of proving that it is more likely than not that the Applicant's father came to the United States in 1943 and stayed at least 10 years with his mother, 5 of which were after he was 14 years of age. *See* Oral Decision of the Immigration Judge, [REDACTED] 2012, 11-13. The Immigration Judge found that the Applicant did not meet his burden of proof that he is a citizen of the United States.

The Applicant appealed the Immigration Judge's decision to the Board. The Board also noted that although the Applicant submitted a letter from the [REDACTED] indicating that no documents exist certifying that his father completed his primary school instruction, the letter does not

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definitively state that his father did not attend that school. *See* Decision of the Board of Immigration Appeals, June 18, 2012, p. 2.

In response to the contention that the letter from the [REDACTED] did not definitively state that his father did not attend that school, the Applicant submitted another document issued by the principal of the [REDACTED]. This document, dated in 2014, states that the institution keeps records of past school years, and that the principal conducted an exhaustive search of the school years from 1944 to 1951, and found there to be no evidence that the Applicant's father had been registered in any grade during those school years. The principal attested that there is no evidence that he was registered in that school. This document provides relevant, probative, and credible evidence that the information on the 1950 school document indicating that the Applicant's father attended the [REDACTED] school in [REDACTED] Mexico, is not correct, and that he never attended the school listed on that document prior to 1950.

The 2014 document from the principal of the [REDACTED] stating that the Applicant's father never attended that school in Mexico prior to 1950 is consistent with other evidence in the record to establish that the Applicant's father was physically present in the United States from 1946 to 1950, including the testimony of the Applicant's father during the Applicant's immigration proceedings, and the affidavit from the step-brother of the Applicant's father stating that the Applicant's father never lived with his family in [REDACTED] Mexico, and the documents from the [REDACTED] regarding the Applicant's grandmother's employment from 1943 to 1948.

C. Evidence of U.S. Citizen Father's Physical Presence, 1951 to [REDACTED]

In order for the Applicant to qualify for a Certificate of Citizenship under former section 301(a)(7) of the Act, the Applicant must show that his U.S. Citizen father was physically present in the United States for at least 5 years after attaining the age of 14 on [REDACTED] and prior to the Applicant's birth on [REDACTED].

The evidence in the record regarding the Applicant's father's physical presence in the United States after 1949 includes the aforementioned 1950 school document, showing that the Applicant's father was registered at a school in the United States in 1950. Further evidence includes a social security statement for the Applicant's father showing that his father had wage earnings in the United States from 1951 to 2008. The Applicant also presented a copy of a letter from the [REDACTED] in [REDACTED] California, stating that the Applicant's father was a member in good standing of the union from January 1951 to December [REDACTED]. Also, the marriage certificate between the Applicant's parents in 1952 was issued in [REDACTED] Arizona, constitutes further evidence that the Applicant's father was physically present in the United States at that time.

These school, government, and organization-issued documents corroborate assertions that the Applicant's U.S. citizen father resided in the United States from 1950, when he was [REDACTED] years old, until the birth of the Applicant in [REDACTED] a period of 7 years, thus satisfying the requirement that the

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Applicant's father have at least 5 years of physical presence in the United States after attaining the age of 14, and prior to the Applicant's birth.

IV. CONCLUSION

In view of the above, the Applicant has demonstrated through a preponderance of the evidence that his father was physically present in the United States for at least 10 years before the Applicant's birth, at least five of which were after attaining the age of 14 years. Accordingly, the Applicant has established that he acquired U.S. citizenship at birth through his U.S. citizen father pursuant to former section 301(a)(7) of the Act.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of R-G-C-*, ID# 18185 (AAO Aug. 18, 2016)